

REMARKS

This Preliminary Amendment accompanies a Continued Prosecution Application (CPA) filed under 37 C.F.R. §1.53(d) and a Petition for an Extension of Time for a Period of one (1) month.

Applicants respectfully request entry of the instant Preliminary Amendment. Claims 1-34 were pending in the parent application. The instant Preliminary Amendment cancels Claims 1-34. The instant Preliminary Amendment adds new claims 35 through 58. Applicant reserves full rights to pursue the non-elected claims in a related application.

All of the newly added claims 35 through 58 are fully supported in the specification, and thus there is no issue of new matter. Specifically, independent Claim 35 is supported by originally filed claim 4. Support for the phosphatidylcholine limitation of Claims 36, 54, and 55 can be found throughout the specification; the understanding that the crude pulmonary surfactant (which contains SP-D) also contains other proteins, and lipids such as phospholipids including phosphatidylcholine, is discussed in the specification, for example, at page 10, lines 19 – 21, and further in Example 2, page 10, line 25 through page 11 line 4.

Dependent Claim 37 is supported throughout the specification, and specifically in examples 12, 13, 14, and 21. The limitation of Claim 38 (intratracheal administration of the protein) is supported, for example, in Claim 6 of the originally filed application. Support for Claim 39 (protein aerosolization) can be found, for example, on page 27, lines 20-23. Claim 40 and 48 (additional administration of Il-4) is supported in the specification at Example 17, page 35, line 12 through page 36, line 9. Support for Claims 41 and 49 (additional administration of SP-A) can be found, for example, at Example 3, page 11, particularly at lines 24-27. Support for the addition of SP-B and SP-C to the administration medium (Claims 42-44 and 50-52) can be found, for example, on page 3, lines 15-19.

Dependent Claim 45, drawn to the use of a vector to express SP-D, is supported in originally filed claims 4, 25, and 26, and throughout the specification, for example, page 26, line 31 – page 27, line 2. Support for dependent Claim 47 (wherein the vector is administered intratracheally) can be found, for example, in Claim 6 of the originally filed specification. Support for dependent Claim 46 (drawn to the use of an adenoviral vector) can be found in Example 10, page 29. Support for dependent Claim 47 (drawn to the use of aerosolization to administer the vector) can be found, for example, on page 26, line 31, through page 27, line 3.

Support for dependent Claim 53 (drawn to the treatment of emphysema) can be found throughout the specification, and specifically at Example 10, (page 10) and originally filed Claim 5.

Support for independent Claim 54, (drawn to a method for decreasing pulmonary phosphatidylcholine levels) is present in Example 11, particularly at page 31, lines 6 –11, where the method of measuring and evaluating changes in several phospholipid levels (including phosphatidylcholine) after administration of the SP-D protein (or viral vector expressing it) is taught. Further, the finding that SP-D (-/-) mice have increased phosphatidylcholine levels is demonstrated in Example 2 (page 10, line 25 through page 11, line 12).

Support for Claims 55-56, (drawn to a method of prevention and treatment of a viral disease) can be found in originally filed Claims 26 and 27. Additional support for Claims 55 – 56, and also for claim 57 (drawn to a method of decreasing pulmonary virus titer) can be found, for example, in figure 16 (see description at page 6, lines 20-26); Example 13, page 33, line 7-22; and Example 21 at page 37, line 26 – page 38, line 9.

Support for Claim 58 (drawn to a method of inhibition of metalloproteinase activity and reactive oxygen species) is supported by Claim 28 of the originally filed specification, and additionally in Example 6, at page 19, line 18 through page 20, line 2; and further Example 7, particularly at page 22, lines 7-19.

Therefore, since all of the claims are fully supported in the instant specification, entry of the instant Preliminary Amendment is respectfully requested. After entry of the Preliminary Amendment, Claims 35 - 58 will be pending in this application.

In response to the restriction requirement in the prior application, group IV (drawn to a pharmaceutical composition comprising SP-D protein) was elected. In the present CPA, however, Applicants wish to switch to the election of group II (drawn to a method of treatment comprising introducing SP-D protein). Applicants respectfully point out that a so-called “shift” is permitted if specifically requested by the applicant when a CPA is filed, see M.P.E.P. §819.

Applicants respectfully submit that the instant application is in condition for allowance, early notification of which would be greatly appreciated. The Examiner is respectfully invited to contact the undersigned at the telephone number provided below with any questions regarding this application.

Appl. No. : 09/558,576
Filed : April 26, 2000

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated:

February 28, 2003

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